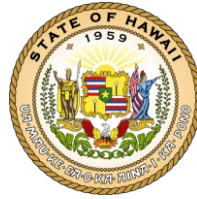


DAVID Y. IGE
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

**TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII**

TO THE SENATE COMMITTEE ON WAYS AND MEANS

ON

SENATE BILL NO. 3252 S.D. 1

March 3, 2022

10:10 A.M.

Via Videoconference

RELATING TO PUBLIC RECORDS

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee,

S.B. 3252 S.D.1 proposes to impose a cap on charged costs for reproduction of government records, waive reproduction costs for the first 100 pages if disclosure is in the public interest, waive the cost of duplication in an electronic format, impose a cap on charges for searching, reviewing and segregating records, and provide a waiver of fees when the public interest is served.

While the ERS supports the intent of the bill, the ERS has some concerns and offers the following comments:

The capping or waiving of fees is typically set at a level that is too low to cover actual expense incurred in gathering, copying and disseminating the materials. From a historical perspective, the cap has a tendency to become outdated over time, thereby invisibly increasing the level of cost to the agency. The ERS notes that the research and gathering of information requires the time and effort of its highly compensated professional staff, such as investment officers and program specialists, as well as its clerical staff. The bill's proposed cap would not allow the rates to be raised enough to reflect average current salaries, and overtime, the statutorily capped rates would



Employees' Retirement System
of the State of Hawaii

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represent a smaller and smaller share of the average salary cost of the employee time spent responding to UIPA requests.

There have been an increasing number of public requests for records, a number that is likely to increase if records become available at no cost to the requestor. Notably, the majority of requests to the ERS, often complex and related to investment activity, do not come from the public within our state but from outside individuals and enterprises who have commercial interests but express a public purpose.

The complete waiver of all fees for those requests that qualify could be burdensome for the ERS and result in a larger number of complex record requests, as there would be no incentive for the requester to narrow such a request. Such an increase in requests would require an inordinate amount of the ERS's staff time that could detract from the ERS's other work.

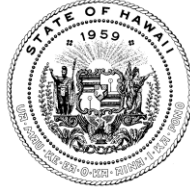
As to the proposed waiver of fees if information is "in the public interest," the bill does not provide a standard for determining when a request is "in the public interest." Nor does the bill specify who would make the determination.

The ERS shares and incorporates the concerns expressed in Office of Information Practices' (OIP) testimony, including the failure of current fees to reflect current salaries, changes in standard for a public interest waiver of fees under the UIPA, and ambiguity in the bill about the cost of producing documents in electronic format.

The OIP's list of potential unintended consequences applies to the ERS. In particular, the proposed fee caps and waivers this bill may:

- shift more and more of the cost of providing public access to government records onto the ERS;
- encourage the filing of more complex record requests;
- slow the processing of all record requests, as well as slow the ERS's work unrelated to record requests;
- increase the ERS's need for more funding to recruit, train and hire additional staff;
- reduce government efficiency as well as government transparency due to delays in processing record requests.

Thank you for this opportunity to provide testimony.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Ways and Means
Thursday, March 3, 2022
10:10 a.m.
Via Videoconference

On the following measure:
S.B. 3252, S.D. 1, RELATING TO PUBLIC RECORDS

Chair Dela Cruz and Members of the Committee:

My name is Ahlani Quiogue, and I am the Licensing Administrator of the Department of Commerce and Consumer Affairs' (Department) Professional Vocational Licensing (PVL) Division. The Department has strong concerns with this bill and offers comments.

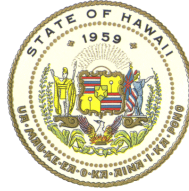
The purpose of this bill are to: (1) impose a cap on the charged costs for the reproduction of certain government records; (2) waive reproduction costs for the first one hundred pages if disclosure is in the public's interest; (3) waive the cost of duplication of government records in an electronic format; (4) impose a cap on charged costs for searching, reviewing, and segregating records; and (5) provide a waiver of fees when the public interest is served.

While the Department appreciates the intent of this measure to provide greater public access and transparency, it has strong concerns about several proposed amendments to Hawaii Revised Statutes (HRS) section 92-21, and the ramifications of the proposed changes upon the Department's operational functionality. In order to protect the privacy interests of individuals whose information is included in the requested records, staff must engage in search, review, and segregation of the records. The time consuming and labor-intensive nature of these tasks are demonstrated by the definitions of "search", "review", and "segregation in Hawaii Administrative Rules (HAR) section 2-71-2. Should search, review, and segregation (SRS) fees for duplication of digital records or production of records in service of the public interest be waived, it would likely be very costly to government agencies, as requests requiring extensive searches and the production of a voluminous amount of records are very likely to be tailored as coming from individuals and organizations seeking records to serve the public interest.

While proponents of fee reductions or fee waivers may argue that SRS fees discourage requesters or deny access to government records, the fees are not proven to be unreasonable. Due to budgetary constraints, an agency should be permitted to charge reasonable fees for services rendered, particularly when there is no limit to the number of services which may be requested. In HAR section 2-71-1, the Office of Information Practices expressly stated that SRS fees "are not intended to obstruct public access to disclosable records but rather are intended to allow agencies to recover some costs in providing access to disclosable records upon request." A staff person who searches, reviews, and segregates a government record is providing a necessary service and the agency is incurring costs in providing this service.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE CASE
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Thursday, March 3, 2022
10:10 AM
Conference Room 211 and Via Videoconference**

**In consideration of
SENATE BILL 3252, SENATE DRAFT 1
RELATING TO PUBLIC RECORDS**

Senate Bill 3252, Senate Draft 1 proposes to impose a cap on the amount an agency can charge for the reproduction of certain government records and on costs charged for searching, reviewing and segregating records. It also proposes to waive certain reproduction costs, and waives all fees for search, review and segregation of records when the public interest is served. The **Department of Land and Natural Resources (Department)** offers the following comments.

With regard to the waiver of fees for reproduction of documents, the Department supports waiving copying charges for the first 100 pages for public interest requests. Currently, there is no public interest waiver for the reproduction of documents. However, the Department currently charges 50 cents per copy to recoup cost for staff time, paper, and wear and tear on the copy machine. The bill proposes to cap charges at 25 cents, half of the current charges. The Department would prefer to not have a cap on maximum costs so we can continue to recoup our costs to copy documents, including the copying of electronic files.

The Department is concerned that the waiver of all fees for searching, reviewing or segregating documents requested in the public interest will increase the amount of time staff spend performing this function.

Public interest request tends to be very broad, which means that they are time consuming and have no clear boundaries on what the requestor is seeking. The current practice is for the Department to estimate costs for broad requests and provide this information to the requestor. This tends to incentivize requestors to more narrowly focus their requests, while still allowing them to request the information they need. Without a fee for these broad requests, staff time searching, reviewing and segregating documents will increase, as well as costs for copying more

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

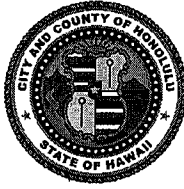
documents. The Department suggests that either there is no fee waiver at all, or that there is a maximum waiver limit of 100 pages for public interest requests. Alternatively, the Legislature could consider providing funds to pay for additional staff to address broader requests as well as potentially more requests made in the public interest.

Thank you for this opportunity to comment on this measure.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



ALEX KOZLOV, P.E.
DIRECTOR

HAKU MILLES, P.E.
DEPUTY DIRECTOR

February 28, 2022

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice-Chair
and Members of the Committee on Ways and Means
The Senate
State Capitol, Conference Room 211
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members:

SUBJECT: Senate Bill No. 3252 SD1
Relating to Public Records

The Department of Design and Construction (DDC) respectfully **opposes** Senate Bill No. 3252 SD1. The purpose of the bill is to:

- (1) Impose a cap on the charged costs for the reproduction of certain government records;
- (2) Waive reproduction costs for the first one hundred pages if disclosure is in the public interest;
- (3) Waive the cost of duplication of government records in an electronic format;
- (4) Impose a cap on charged costs for searching, reviewing, and segregating records; and
- (5) Provide for a waiver of fees when the public interest is served.

The existing fees for processing government record requests are much less than the costs incurred. Additionally, the staff resources expended to search, review, segregate, and redact when needed, the requested records detract from DDC's primary responsibility of efficiently executing capital improvement projects for the City and County of Honolulu within budgeted timelines. DDC does not have additional personnel to respond to Freedom of Information Act requests, so the requests are researched and prepared by existing personnel in addition to their regular duties.

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice-Chair
and Members of the Committee on Ways and Means
February 28, 2022
Page 2

This bill would be expected to increase the frequency and scope of requests and the resources required to respond to those requests. DDC shares the concerns of the Office of Information Practices' (OIP) testimony, including concern that the bill would:

- Shift more and more of the cost of providing public access to government records onto DDC;
- Encourage the filing of more complex record requests;
- Slow the processing of all record requests, as well as slow DDC's work unrelated to record requests;
- Reduce DDC's efficiency as well as transparency due to delays in processing record requests.

Based on the above considerations, DDC respectfully **opposes** Senate Bill No. 3252 SD1.

Thank you for the opportunity to express our opposition to this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Kozlov', with a long horizontal flourish extending to the right.

Alex Kozlov, P.E.
Director

Statement Before The
SENATE COMMITTEE ON WAYS AND MEANS
Thursday, March 3, 2022
10:10 AM
Conference Room 211 and Videoconference

in consideration of
SB 3252, SD1

RELATING TO PUBLIC RECORDS.

Chair DELA CRUZ, Vice Chair KEITH-AGARAN, and Members of the Senate Ways and Means Committee

Common Cause Hawaii supports SB 3252, SD1, which (1) imposes a cap on the charged costs for the reproduction of certain government records, (2) waives reproduction costs for the first one hundred pages if disclosure is in the public's interest, (3) waives the cost of duplication of government records in an electronic format. Imposes a cap on charged costs for searching, reviewing, and segregating records, and (4) provides for a waiver of fees when the public interest is served.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to upholding the core values of our representative democracy through increasing civic engagement and breaking down the barriers to participating in our government.

Common Cause Hawaii has received complaints from the public as to the exorbitant costs charged by agencies for producing documents in electronic format, chilling public engagement. SB 3252, SD1 will waive the cost of duplication of government records in an electronic format and will impose a cap on the costs charged for searching, reviewing, and segregating records if the agency maintains those documents in an electronic format. Further, SB 3252, SD1 will waive fees when the public interest is served.

For these reasons, Common Cause Hawaii supports SB 3252, SD1. It will hopefully increase government accountability and transparency and reduce the public's barriers and burden to participating in our government.

Thank you for the opportunity to testify in support of SB 3252, SD1. If you have any questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Honolulu, HI 96813

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Senate Committee on Ways and Means
Honorable Donovan M. Dela Cruz, Chair
Honorable Gilbert S.C. Keith-Agaran, Vice Chair

RE: Testimony Supporting S.B. 3252 S.D. 1, Relating to Public Records

Hearing: March 3, 2022 at 10:10 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony **supporting** S.B. 3252 S.D. 1.

State and county agencies maintain records for the people of Hawai'i. Excessive fees for record requests are an obstacle to any general policy of open government. The high cost of records discourages the public from asking questions about government operations. And it reinforces the public perception and the reality of social inequity between the elite and wealthy who know what is happening in Hawai'i because they have free access to information or can pay for it and those members of the public who do not have and cannot afford such access.

When someone requests access to the people's records *for the purpose of educating the general public about operations and activities of our government*, cost should not be an obstacle. An individual's public record request educates one person, but a public interest request typically educates thousands of people in Hawai'i. News media and public interest organizations spend hundreds of hours investigating, synthesizing, and publishing information about government operations. When the cost is too much, the general public is left in the dark.

For example, reporters and watchdog activists have written articles *sourced from public records* on the State's pension burdens, the deficiencies in DHHL's or DLNR's revocable permit systems, the discipline or exoneration of law enforcement officers for the death or assault of a citizen, the delays at DCCA in disciplining physicians, and even the cost of public records. Public discussion of these concerns about government operations — informed by access to government records — has led to reform in every instance.

Based on the Law Center's regular studies of data regarding UIPA requests to State and county agencies, requests made by public interest organizations — which would be impacted by this proposal — account for a very small number of requests annually. Typical of most years, in FY 2021, such public interest requests accounted for less than

5% of all requests. Thus, this proposal will not significantly impact the government fisc, but the corollary benefit of giving the people of Hawai`i greater access to understand their government is immeasurable.

In a random sampling of states, including Hawai`i, a March 2020 survey of public records laws found that Hawai`i agencies charged more than twice any other state in the survey. A. Jay Wagner, *Probing the People's Right to Know: A 10-State Audit of Freedom of Information Laws*, at 12. Many jurisdictions have clear statutory language that public interest requests will not be obstructed by government fees. For public interest requests, government agencies are not denying access to that single person; they are denying access to the thousands of people who would have received that information when the public interest requester disseminated it to the general public.

In addition, the proposed amendments regarding copying costs will address recurring problems where, for example, agencies attempt to charge per page fees for Excel spreadsheets that are thousands of pages when printed, but cost nothing to e-mail to the requester.

In prior testimony, absent excessive fee estimates to dissuade requesters from seeking information, agencies claim that public interest requesters will make exceptionally broad requests that will be burdensome and costly for agencies. That concern is unfounded. Requesters want *timely* access to information. If a requester makes a broad and burdensome request for voluminous records, an agency is authorized by existing law to disclose records on a month-to-month basis as its other duties permit; the deadlines for disclosure do not apply. Agencies rarely are willing to discuss ways to reduce fee estimates, so quoting tens of thousands of dollars in fees becomes an effective and complete block on public access. If agencies are required to disclose records in the public interest—it is only a matter of time—both the requester and the agency have incentives to discuss meaningful ways to narrow a request.

Also, regarding “commercial interest” as raised in agency testimony, the phrase is “*primarily* in the commercial interest”. Only OIP has ever said that news media are acting primarily in the commercial interest. In contrast, as the Senate Judiciary committee report summarized, the Freedom of Information Act standard that is adopted in this bill allows for public interest waivers for the news media. The U.S. Department of Justice explained “primarily in the commercial interest”:

For example, although newsgathering organizations usually have a commercial interest in obtaining information, the traditional process of newsgathering and dissemination by established news media organizations, as a rule, should not be considered to be “primarily” in their commercial interest; because of their established role in providing information to the general public, it ordinarily can be presumed that, if a

significant public interest has been identified, that will be the interest “primarily” served by disclosure to such organizations.

U.S. Dep’t of Justice, New Fee Waiver Policy Guidance (Jan. 1, 1987), *available at* <https://www.justice.gov/oip/blog/foia-update-new-fee-waiver-policy-guidance>.

Lastly, OIP’s data showing that nearly all fees are paid by for-profit requesters is not surprising. Only for-profit requesters can afford the fees. Public interest requesters typically abandon requests when the agency quotes an exorbitant fee estimate.

Thank you again for the opportunity to testify in support of S.B. 3252 S.D. 1.



SENATE COMMITTEE ON WAYS AND MEANS
Thursday, March 3, 2022, 10:10 am, Videoconference
SB 3252, SD1
Relating to Public Records

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Dela Cruz and Committee Members:

The League of Women Voters of Hawaii strongly supports SB 3252, SD1. We would appreciate clarification in the bill, or in a committee report, of what charges could be imposed by a government agency for an electronic pdf copy of a government record which the agency maintains in a multi-page 8.5" x 11" paper format rather than an electronic pdf format.

Thank you for the opportunity to submit testimony.



All Hawaii News * P.O. Box 612 * Hilo, HI 96721 * www.allhawaiinews.com

March 1, 2022

**The Honorable Donovan M. Dela Cruz, chairman
Senate Committee on Ways and Means**

**From: Nancy Cook Lauer, publisher, All Hawaii News
www.allhawaiinews.com nclauer@gmail.com 808.781.7945**

In STRONG SUPPORT of SB 3252 SD1, Relating to Public Records

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, supports SB 3252 SD1, capping charges for reproducing, searching, reviewing, and segregating public records and waiving costs under certain conditions.

Access to the public's public records shouldn't depend on how much money you make. A member of the public with less ability to pay shouldn't be treated differently than a wealthier one.

Public records belong to the people, not the government. The people already pay the taxes that support the workers who process the public records requests, the computers and software where the records reside and buildings that contain them.

Mahalo nui for considering SB 3252 SD1.